

No. 2860

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

GUJAR SINGH and INDER
SINGH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE.

Upon Appeal from the Southern Division of the United States
District Court for the Northern District of California,
First Division.

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,

Attorneys for Appellee.

Filed

APR 27 1917

Filed this.....day of April, 1917.

FRANK D. MONCKTON, Clerk,

F. D. Monckton
Clerk

By....., Deputy Clerk.

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BRIEF OF APPELLEE.

STATEMENT OF THE CASE.

The appellants in the above entitled cause entered the United States in the years 1907 and 1909, respectively. Thereafter, on or about the month of April, 1915, said appellants entered the United States from Canada and were arrested on a warrant issued by the Secretary of Labor on the 22nd day of April, 1915. After the arrest of said appellants and a hearing had before the Immigration officials, and deportation ordered by said officials, a petition for writ of habeas corpus was filed on behalf on said appellants, said appellants taking the position

in said petition that the Government officials were restraining said appellants unlawfully.

To this petition the Government filed a demurrer and at the time of the hearing of said demurrer, the record of the Bureau of Immigration which contained all of the proceedings taken in appellant's case was introduced on behalf of the Government and considered upon the hearing of said demurrer as a part of the petition filed on behalf of appellants. Therefore, in determining the question now before the Court, the said record of the Bureau of Immigration is to be taken into consideration.

ASSIGNMENT OF ERRORS.

I.

The Court erred in denying a Writ of Habeas Corpus.

II.

The Court erred in dismissing said petition for a Writ of Habeas Corpus.

III.

The Court erred in not granting a Writ of Habeas Corpus.

IV.

The Court erred in holding that there was sufficient or any evidence presented to the Secretary of

Labor, to give him the right or authority to issue a warrant of deportation against said Gujar Singh and Inder Singh.

V.

The Court erred in holding that the matters alleged in the petition for a Writ of Habeas Corpus did not show that said Gujar Singh and Inder Singh did not have a full and fair hearing before the Commissioner of Immigration and the Immigration Inspectors acting under said Commissioner and the Secretary of Labor.

VI.

The Court erred in holding that the said Commissioner of Immigration and the Immigration Inspector acting under said Commissioner and the Secretary of Labor did not totally and wholly disregard the testimony presented by said applicant and his witnesses.

VII.

The Court erred in not holding that said Gujar Singh and Inder Singh had been unfairly examined owing to the prejudicial conduct of said Immigration officials.

VIII.

The Court erred in not holding that the said Gujar Singh and Inder Singh are restrained of their liberty without due process of law.

IX.

The Court erred in not holding that the said Gujar Singh and Inder Singh were denied due process of law in this, that they are ordered deported without any fair hearing or any hearing, and are denied the legal protection of the law guaranteed by the constitution of Laws of the United States; by the treaty existing between the United States of America and Great Britain according to them the equal protection of law guaranteed to any subject of the most favored nation and also by the rules of regulation of the Department of Labor now and then enforced.

ARGUMENT.

Although there are many errors assigned by appellants, there are but two questions involved in this case and this fact is recognized by said appellants in their opening brief.

The first question is whether or not said appellants entered the United States from the Dominion of Canada a short time prior to their arrest, and secondly, whether or not they were ordered deported to India.

In order to correctly understand the situation under which appellants were ordered deported, it is necessary to give a careful review of portions of the record of the Bureau of Immigration, and with this object in view, the Government first directs at-

tention to the memorandum for the use of the Assistant Secretary, and which was later approved by the Assistant Secretary of Labor, found on page 62 of the Immigration record, and which is as follows:

“The attached record concerns five Hindoo aliens who admitted at the preliminary examination that they had entered from Canada on or about the dates above given, without inspection. They were discovered riding together in a box car at Sandpoint, Idaho. The two first named said they entered the United States in the years 1907 and 1909, respectively, and at the hearing under the warrant of arrest they denied that they had ever been in Canada. Their testimony at the preliminary hearing, however, shows clearly that they came from Canada and is entitled to greater weight than that subsequently given. Moreover the wearing apparel of the two men and various documents in their possession indicate that they have been in Canada recently. The other three men said they have resided in Canada for more than three years and have never lived in the United States. For this reason their return to that country should be permitted by the Canadian authorities. Commissioner Clark points out, however, that the investigation required by the Canadian Government before permitting the return of Hindoo aliens may consume considerable time and he questions whether it would not be advisable to deport the aliens at once to India. With respect to the two who assert a prior residence in this country there seems to be no doubt that they would have to be deported

to India, inasmuch as Canada will in all probability refuse to receive them.

The Bureau concurs in the recommendation that warrant of deportation ISSUE on the grounds stated in the warrants of arrest—that aliens entered without inspection and were at that time persons likely to become public charges—and that the two first named be deported to India at once at the expense of the Government. It believes the other three should be deported to Canada if possible and so recommends. A. H., Acting Commissioner-General.

Approved: (Signed) LOUIS F. POST,
Asst. Secretary.”

Also to extracts of a memorandum filed for use of the Commissioner General of Immigration, found on pages 60 and 61 of the said Immigration record as follows:

“The said Gudja Singh, aged 38, single, farm laborer, native of India, Hindu race, landed at San Francisco, Cal., on or about October, 1907. Alien denies ever having been in Canada, but has papers in his possession which appear to prove conclusively that he has resided there, and in his preliminary hearing, he admits that he last entered the United States at Gateway, Mont., on April 16th, 1915, coming from Waldo, B. C. The examining officer states that he is one of five Hindus taken from a Great Northern box car at Sandpoint, Idaho, on the morning of April 22nd, 1915, at 1:00 A. M.; that he is wearing shoes made in Ontario; wears a cap

with a London trade mark; has Canadian bills, and, as previously stated, has papers executed in Canada. At time of entry alien had but \$6.50 in his possession. * * *

Said Inder Singh, aged 27, single, farm laborer, a native of India, Hindu race, claims to have landed at San Francisco, Cal., in 1909, ex. steamship unknown, and entered the United States by walking across the border near Gateway, Montana, on or about April 20th, 1915, having in his possession only \$2.00. While alien admits the foregoing concerning his last entry to the United States in his preliminary hearing, he denies having been in Canada in the formal hearing accorded him. This alien appears to be very untruthful and it is believed that the statement made by him when first questioned is the true one."

When this matter was first called to the attention of the Immigration officials, a statement was taken from one of said appellants, namely: Gujar Singh, which appears on pages 14 and 15 of said Immigration record, as follows:

"Q. What is your full and correct name?

"A. Gudja Singh.

"Q. How old are you?

"A. 38 years old.

"Q. Are you married or single?

"A. I am single.

“Q. What kind of work do you do?”

“A. Farm labor. I am a farm laborer.

“Q. Do you read and write?”

“A. Yes in the Hindu language.

“Q. Where were you born?”

“A. Wudala, Punjeb, India.

“Q. Of what country are you a citizen?”

“A. India.

“Q. Of what race are you?”

“A. East Indian Race.

“Q. Where did you land when you first came from India?”

“A. San Francisco, California.

“Q. Give the date?”

“A. About October 1907.

“Q. Give the name of the steamship on which you came?”

“A. I do not know the name of the ship. It was a big white boat. Only twenty Hindu men came on that boat.

“Q. Where did you enter the United States when you came from Canada?”

“A. At Gateway, Montana.

“Q. Give the date?”

“A. April 16, 1915.

“Q. Did you see an Inspector when you crossed at Gateway?”

“A. No.

“Q. What time was it when you crossed the border?

“A. About 6.00 P. M.

“Q. Did you come alone?

“A. Yes.

“Q. Why did you not report to the Customs and Immigration Officers?

“A. I did not see them. I was looking for work, and just came across.

“Q. How much money did you have when you entered the United States?

“A. About \$6.50.

“Q. From what town in Canada did you come?

“A. Waldo, B. C.”

After said statement was taken an application for a warrant of arrest, under Sections 20 and 21 of the Act of February 20, 1907, was made, which application appears on page 13 of said record. In said application it is stated that from the sworn statements of said aliens, it appears

“That they are all aliens, viz., citizens of India;
That they all entered the United States on foot from Canada at the Port of Gateway, Montana, on or about April 19, 1915;
That all entered without inspection;
That all were at time of entry persons likely to become a public charge.”

Following the first statement referred to herein made by the said Gujar Singh, it will be noted that he repudiated the admissions made in said statement (pages 53, 54 and 55 of the Immigration record), but the evidence found on the person of the said Gujar Singh would indicate that his first statement was true and that he entered the United States from the Dominion of Canada as stated therein.

A record was found in his person at the time of the arrest, a copy of which is set forth on page 51 of the record of the Bureau of Immigration, as follows:

“Gudja Singh (Exhibit “C”)

(Office copy)

Victoria Registry,

Nov. 24th, 1914,

Ex'd by V. Y.

(Seal)

JUDGMENT BY DEFAULT FOR PLAINTIFF,

Liquidated Demand.

No. of Plaint. 1160

140

IN THE COUNTY OF VICTORIA,

Holden at Victoria,

BETWEEN Gajas Singh, Plaintiff,

and

Harabut Singh, Defendant,

the 28th day of Sept., 1914.

The defendant not having entered a dispute note it is this day adjudged that the plaintiff recover against the defendant \$24.40 and \$9.05 costs, amounting together to the sum of \$33.45.

BY THE COURT

Harvey Combe, Registrar.”

Also a recommendation was found in his possession which shows that it was given by a Company

operating at Fort Moody, British Columbia. This record is found on page 50 of the record of Immigration.

The statement obtained from Inder Singh, which appears upon page 6 of the said record of the Bureau of Immigration also shows that he entered the Canadian border into the United States without inspection on April 20, 1915, prior to his arrest.

On page 52 of the record of the Bureau of Immigration is found a statement by Immigrant Inspector Obed S. Davis, made following the examination of said appellants, and which is as follows:

“The above alien Gudja Singh is one of five Hindus taken from a Great Northern box car at Sandpoint, Idaho, on the morning of April 22, 1915, at 1.00 A. M. These aliens were all lying in the car together, occupying the same blankets, and when taken from the car was seemingly sober enough. This alien claims to have been drunk but when he was taken from the car he was sober enough. He first claimed that he was coming from Waldo, and that he entered the United States at Gateway, Montana, but later denies that he had been in Canada at all. He is wearing shoes made in Ontario, whereas a cap with a London mark, has Canadian bills, and carries papers written in Canada.

He is coming at a time when there are no Hindus working in this part of the country, and there seems no excuse for his presence here except that he is trying to get out of Canada, and

to get among his countrymen in Oregon and California.

From the foregoing evidence, I Obed S. Davis, the duly authorized examining officer in the case, find the following facts:

That Gudja Singh, is an alien; a citizen of India;

That he entered the United States at Gateway, Montana, on or about April 16, 1915, walking across the border at night;

That his entry was deliberately surreptitious, and without inspection;

And that he was at the time of his entry to the United States a person likely to become a public charge, having but \$6.50 in his possession.

I therefore recommend deportation.

(Signed) OBED S. DAVIS,
Immigrant Inspector.”

Having gone into the facts of the case, the principal question to be determined is whether or not said appellants are subject to deportation, they having entered the United States from the Dominion of Canada without undergoing an inspection by the Government officials. This is no longer a mooted question.

Appellants' counsel also takes the position that the order of deportation should have directed that the aliens be deported to Canada instead of India,

but in answer to this contention, the Government directs attention to the following cases:

Lewis vs. Frick, 233 U. S. 291,

United States vs. Reiz, 203 Fed. 441.

In the case of *Lewis vs. Frick*, *Supra*, Justice Pitney, delivering the opinion, stated:

“Petitioner is an alien and a native of Russia. He came thence to this country, entering at the Port of New York, in the month of September, 1904, lived in or near New York city until March, 1910, then removed to Detroit, Michigan, and has since made that city his home. On November 17, 1910, he crossed the river from Detroit to Windsor, Canada, and brought back with him into the United States a woman, avowed by him to be his wife, but whose actual status was questioned, as will appear. A few days later he was arrested upon a warrant from the Department of Commerce and Labor, issued under the immigration act of February 20, 1907 (34 Stat. at Large, 898, chap. 1134) as amended March 26, 1910 (36 Stat. at Large, 263, chap. 128, U. S. Comp. Stat. Supp. 1911, p. 501), and after a hearing conducted by an inspector, the Secretary, on February 14, 1911, found ‘that said alien is a member of the excluded classes, in that he * * * procured, imported, and brought into the United States a woman for an immoral purpose,’ etc., and thereupon ordered that he be deported to the country whence he came, to wit, Russia. * * * *

Petitioner not having been convinced under par. 3, his destination is to be determined rather in the light of paragraphs 20, 21, and 35. And first, we take it to be clear (notwithstanding the peculiar phraseology of par. 20) that the three-year period limits only the authority to deport, and does not affect the determination of the country to which an alien is to be deported. Respecting this matter, the sections are somewhat lacking in clearness. But at least, par. 35 indicates a legislative intent that aliens subject to deportation shall be taken to trans-Atlantic or trans-Pacific ports, if they came thence, rather than to foreign territory on this continent, although it may have been crossed on the way to this country. This was recognized by Rule 38 of the Immigration Regulations, in force December 12, 1910.

It is to be noted that the classes of aliens who are subject to deportation are not wholly made up of those who enter in violation of the law; in some cases cause for deportation may arise after a lawful entry. And in many cases the unlawfulness of the entry may not be discovered until afterwards. The theory of the act, as expressed in par. 2, is that the undesirables ought to be excluded, at the sea port or at the frontier; but pars. 20, 21, and 35 recognize that this is not always practicable. Of course if petitioner's attempt to bring a woman into the country for an immoral purpose had been discovered in time, he might have been physically excluded from entry at Detroit upon his return from Windsor. In that event he would naturally have remained upon Canadian soil. But

since his offense was not discovered in time to permit of his physical exclusion, so that he becomes subject to the provisions for deportation, his destination ought not to be controlled by the factitious circumstances that he went into Canada to procure the prostitute. And, upon the whole, it seems to us that the act reasonably admits of his being returned to the land of his nativity, that being in fact 'the country whence he came' when he first entered the United States. See *Lavin v. Le Fevre*, 60 C. C. A. 425, 125 Fed. 693, 696; *Ex parte Hamaguchi*, 161 Fed. 185, 190; *Ex parte Wong You*, 176 Fed. 933, 940; *United States vs. Ruiz*, 121 C. C. A. 551, 203 Fed. 441, 444."

It will be noted on page 62 of the record of the Bureau of Immigration that in all probabilities the Canadian authorities would not accept said appellants in the event they were ordered deported there by the Immigration officials. The Government therefore submits that because of the fact that said appellants entered the United States from Canada surreptitiously and without examination or inspection by Government officials, that they are now subject to the order of deportation, as provided for in the said record of the Bureau of Immigration, and that India is the proper place to which they should be deported.

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Asst. U. S. Attorney.

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